

judge denying a motion to quash a subpoena. In such cases, the DOT decision-maker may order that the return date of a subpoena which he or she has elected to review be stayed pending DOT action thereon.

[Docket No. 82, 50 FR 2421, Jan. 16, 1985, as amended at 65 FR 6457, Feb. 9, 2000]

PART 313—IMPLEMENTATION OF THE ENERGY POLICY AND CONSERVATION ACT

Sec.

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AUTHORITY: 42 U.S.C. 6362(b), 49 U.S.C. Chapter 401.

SOURCE: Docket No. 82, 50 FR 2425, Jan. 16, 1985, unless otherwise noted.

§ 313.1 Purpose, scope, and authority.

(a) Chapter 77 (Energy Conservation) of Title 42 (The Public Health and Welfare), authorizes and directs certain actions to conserve energy supplies through energy conservation programs and where necessary, the regulation of certain energy uses, and to provide for improved energy efficiency of motor vehicles, major appliances, and certain other consumer products. In furtherance of these purposes, 42 U.S.C. 6362 requires several transportation regulatory agencies, including DOT, to submit a number of reports to the Congress with respect to energy conservation and efficiency, and where practicable and consistent with the exercise of DOT's authority under other law, to include in any major regulatory action a statement of its probable impact on energy efficiency and energy conservation. 42 U.S.C. 6362(b) directs DOT to define the term "major regulatory action" by rule.

(b) Section 40113 of Subtitle VII of Title 49 of the United States Code (Transportation) ("the Statute"), authorizes DOT to establish such rules, regulations, and procedures as are necessary to the exercise of its functions

and are consistent with the purposes of the Statute.

(c) The purpose of these regulations is to establish procedures and guidelines for the implementation of DOT's responsibility under 42 U.S.C. 6362 to include in any major regulatory action taken by DOT a statement of the probable impact on energy efficiency and energy conservation.

(d) These regulations apply to all proceedings before DOT, as provided herein.

[Docket No. 82, 50 FR 2425, Jan. 16, 1985, as amended at 60 FR 43528, 43529, Aug. 22, 1995]

§ 313.2 Policy.

(a) *General.* It is the policy of DOT to view the conservation of energy and the energy efficiency improvement goals of Chapter 77 of Title 42 as part of DOT's overall mandate, to be considered along with the several public interest and public convenience and necessity factors enumerated in section 40101 of the Statute. To the extent practicable and consistent with DOT's authority under the Statute and other law, energy conservation and efficiency are to be weighed in the decision-making process just as are DOT's traditional policies and missions.

(b) *Implementation.* Implementation of this policy is through the integration of energy findings and conclusions into decisions, opinions, or orders in proceedings involving a major regulatory action, as defined in this part.

(c) *Proceedings in progress.* The provisions of this part are intended primarily for prospective application. Proceedings in progress on the effective date of this part, in which an application has been docketed but no final decision made public, shall adhere to § 313.6(a) of this part, provided that the fair, efficient, and timely administration of DOT's regulatory activities is not compromised thereby. Nothing herein shall imply a requirement for new or additional hearings, a reopening of the record, or any other procedures which would tend to delay a timely decision in proceedings in progress.

(d) *Hearings.* Public hearings will not normally be held for the purpose of implementing 42 U.S.C. 6362, particularly in connection with proposed actions

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which do not require notice and hearing as a prerequisite to decision under the Statute. Hearings may be ordered in exceptional circumstances where the proposed action is of great magnitude or widespread public interest and, in addition, presents complex issues peculiarly subject to resolution through evidentiary hearings and the process of cross-examination.

[Docket No. 82, 50 FR 2425, Jan. 16, 1985, as amended at 60 FR 43528, 43529, Aug. 22, 1995]

§ 313.3 Definitions.

As used in this part:

(a) *Energy efficiency* means the ratio of the useful output of services in air transportation to the energy consumption of such services.

(b) *Energy statement* is a statement of the probable impact of a major regulatory action on energy efficiency and energy conservation, contained in a decision, opinion, order, or rule.

(c) *Major regulatory action* is any decision by the DOT decisionmaker or administrative law judge requiring an energy statement pursuant to § 313.4 of this part.

(d) *NEPA* means the National Environmental Policy Act of 1969.

(e) *Statute* means Subtitle VII of Title 49 of the United States Code (Transportation).

[Docket No. 82, 50 FR 2425, Jan. 16, 1985, as amended at 60 FR 43529, Aug. 22, 1995]

§ 313.4 Major regulatory actions.

(a) Any initial, recommended, tentative or final decision, opinion, order, or final rule is a major regulatory action requiring an energy statement, if it:

(1) May cause a near-term net annual change in aircraft fuel consumption of 10 million (10,000,000) gallons or more, compared to the probable consumption of fuel were the action not to be taken; or

(2) Is specifically so designated by DOT because of its precedential value, substantial controversy with respect to energy conservation and efficiency, or other unusual circumstances.

(b) Notwithstanding paragraph (a)(1) of this section, the following types of actions shall not be deemed as major

regulatory actions requiring an energy statement:

(1) Tariff suspension orders under section 41509 of the Statute, emergency exemptions or temporary exemptions not exceeding 24 months under section 40109 of the Statute and other proceedings in which timely action is of the essence;

(2) Orders instituting or declining to institute investigations or rulemaking, setting or declining to set applications for hearing, on reconsideration, or on requests for stay;

(3) Other procedural or interlocutory orders;

(4) Actions taken under delegated authority; and

(5) Issuance of a certificate where no determination of public convenience and necessity is required.

(c) Notwithstanding paragraph (a)(1) of this section, DOT may provide that an energy statement shall not be prepared in a proceeding which may result in a major regulatory action, if it finds that:

(1) The inclusion of an energy statement is not consistent with the exercise of DOT's authority under the Statute or other law;

(2) The inclusion of an energy statement is not practicable because of time constraints, lack of information, or other unusual circumstances; or

(3) The action is taken under laws designed to protect the public health or safety.

[Docket No. 82, 50 FR 2425, Jan. 16, 1985, as amended at 60 FR 43529, Aug. 22, 1995]

§ 313.5 Energy information.

(a) It shall be the responsibility of applicants and other parties or participants to a proceeding which may involve a major regulatory action to submit sufficient information about the energy consumption and energy efficiency consequences of their proposals or positions in the proceeding to enable the administrative law judge or the DOT decisionmaker, as the case may be, to determine whether the proceeding will in fact involve a major regulatory action for purposes of this part, and if so, to consider the relevant energy factors in the decision and prepare the energy statement.

(b) In proceedings involving evidentiary hearings, the energy information shall be submitted at such hearings pursuant to DOT's usual procedural regulations and practices, under control of the administrative law judge or other hearing officer.

(c) In proceedings not involving evidentiary hearings, the energy information shall be submitted at such time as other materials in justification of an application are submitted. Where an application itself is intended as justification for DOT action, the energy information shall be submitted with the application. In rulemakings not involving hearings, the energy information shall normally be submitted along with comments on the notice of proposed rulemaking, or as directed in any such notice or any advance notice.

§ 313.6 Energy statements.

(a) Each major regulatory action shall include, to the extent practicable, consideration of the probable impact of the action taken or to be taken upon energy efficiency and conservation. The administrative law judge or the DOT decisionmaker, as the case may be, shall normally make findings and conclusions about:

(1) The net change in energy consumption;

(2) The net change in energy efficiency; and

(3) The balance struck between energy factors and other public interest and public convenience and necessity factors in the decision.

(b) Energy findings and conclusions contained in any initial or recommended decision are a part of that decision and thus subject to discretionary review by DOT.

(c) In the case of orders to show cause initiated by DOT, energy findings and conclusions may be omitted if adequate information is not available. In such instances, the energy statement shall be integrated into the final decision.

§ 313.7 Integration with environmental procedures.

(a) In proceedings in which an environmental impact statement or a finding of no significant impact is prepared by a responsible official pursuant to

DOT's procedures implementing the National Environmental Policy Act of 1969 (NEPA), the energy information called for by this part may be included in that statement or declaration in order to yield a single, comprehensive document. In such instances, the DOT's NEPA procedures shall govern the submission of the energy information. However, it shall remain the responsibility of the administrative law judge or the DOT decisionmaker, as the case may be, to make the findings and conclusions required by § 313.6(a) of this part.

(b) A determination that a major regulatory action within the meaning of 42 U.S.C. 6362 and this part may be involved in a proceeding is independent from any determination that the proceeding is a "major Federal action significantly affecting the quality of the human environment" within the meaning of NEPA, and vice versa.

[Docket No. 82, 50 FR 2425, Jan. 16, 1985, as amended at 60 FR 43528, 43529, Aug. 22, 1995]

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